

Regular Session, 2012

SENATE BILL NO. 548

BY SENATORS RISER, ALARIO, MORRELL, GARY SMITH AND WALSWORTH

ECONOMIC DEVELOPMENT. Creates the Competitive Projects Payroll Incentive Program which grants rebates of up to 15% of qualifying payroll to certain businesses and rebates of sales tax or capital expenditures if DED determines it will result in significant positive economic benefit to the state. (7/1/12)

AN ACT

To enact Chapter 54 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3111, relative to the creation of the Competitive Projects Payroll Incentive Program; to provide for contract for the payment of rebates to certain qualified businesses; to provide for procedures and requirements for the execution of such contracts and the payment or repayment of such rebates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 54 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:3111 is hereby enacted to read as follows:

CHAPTER 54. COMPETITIVE PROJECTS PAYROLL

INCENTIVE PROGRAM

§3111. Competitive Projects Payroll Incentive Program

A. Definitions. For purposes of this Section, the following words or terms as used in this Chapter shall have the following meaning, unless a different meaning appears from the context:

(1) "Basic health benefits plan" means coverage for basic hospital care,

coverage for physician care, and coverage for health care which is determined by the Department of Economic Development to have a value of at least one dollar and twenty-five cents per hour and which is the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity by the employer who are exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act, 29 U.S.C.A. §201, et seq.

(2) "Board" means the Board of Commerce and Industry.

(3) "Business" means any individual, firm, joint venture, association, corporation, estate, partnership, business trust, receiver, syndicate, or any other legal business entity.

(4) "Department" means the Department of Economic Development.

(5) "Headquarter jobs" means permanent full-time executive, administrative, or professional jobs based at a principal or regional office located in Louisiana, in which are located the principal or regional executive officers normally constituting a principal or regional headquarters providing corporate governance. Such principal or regional executive officers include but shall not be limited to chief executive officer, chief operating officer, and other senior level officers or appropriate regional equivalents.

(6) "New Jobs" means permanent full-time direct new jobs based at the facilities designated in the contract and filled by residents of the state.

(7) "New payroll" means payment by the business to its employees for new jobs, exclusive of benefits and defined as wages under Louisiana Employment Security Law (La. R.S. 23:1472(20)).

(8) "Program" means the Competitive Projects Payroll Incentive Program.

(9) "Qualified business" means a business certified by the secretary as meeting the eligibility requirements of Subsection B of this Section, approved by the board to participate in the program, and executing a contract providing

1 the terms and conditions for its participation.

2 (10) "Secretary" means the secretary of the Department of Economic
3 Development.

4 (11) "Shared services center jobs" shall mean jobs of full time employees
5 located in the state of Louisiana which are based at a business located in
6 Louisiana that performs specific corporate operational tasks for the business,
7 its affiliates, or customers, such as accounting, human resources, payroll, or
8 purchasing.

9 (12) "Significant positive economic benefit" means that net positive tax
10 revenues to be generated as a result of the project taking into account both
11 direct, indirect, and induced impacts based on standard economic impact
12 methodology utilized by the department and the value of the rebate and any
13 other state tax and financial incentives that are used by the department to
14 secure the qualified business.

15 B.(1) Eligibility Requirements. A business shall be eligible for
16 participation in the program if all of the following requirements are met:

17 (a) At least fifty percent of the total annual sales of the business from a
18 Louisiana site or sites is to out-of-state customers or buyers, in-state customers
19 or buyers but the product or service is resold by the purchaser to an out-of-state
20 customer or buyer for ultimate use, or the federal government, or any
21 combination thereof.

22 (b) The activities of the business at a Louisiana site or sites includes
23 corporate headquarters, clean technology, next generation automotive,
24 aerospace, destination healthcare, research and development operations,
25 pharmaceutical manufacturing, renewable energy, or other business sector
26 targeted by the secretary as a focus of the department's economic development
27 efforts.

28 (c) The business offers, or will offer within ninety days of the effective
29 date of qualifying for the incentive rebates pursuant to the provisions of this

1 Chapter, a basic health benefits plan to the individuals it employs as provided
2 in Paragraph A(1) of this Section.

3 (2) The secretary, at his discretion, may include sales by affiliates of the
4 business in determining the percentage of sales meeting the requirements of
5 Paragraph (1) of this Subsection.

6 (3) With the exception of a business providing at least twenty-five new
7 headquarter jobs or shared service center jobs, a business primarily engaged
8 in retail sales, real estate, professional services, natural resource extraction or
9 exploration, financial services, or venture capital funds, shall not be eligible for
10 this program. No business engaged in gaming or gambling shall be eligible for
11 the program.

12 C.(1) Applications. At the invitation of the secretary, a business may
13 apply for a contract by submitting to the department such certified statements
14 and substantiating documents as the department may require.

15 (2) Certification. The secretary may certify eligibility of the business and
16 request board approval of its participation in the program on terms and
17 conditions specified by the secretary in a proposed contract, if the secretary
18 determines that:

19 (a) The business meets the eligibility requirements provided for in
20 Subsection B of this Section.

21 (b) Participation in the program is needed in a highly competitive site
22 selection situation to encourage the business to locate or expand in the state.

23 (c) Securing the project will result in a significant positive economic
24 benefit to the state.

25 (3) Approval; contract administration.

26 (a)(i) Upon the board's approval of participation in the program by the
27 business, the secretary shall execute the contract with the business, and provide
28 a copy to the Department of Revenue prior to the payment of any benefits under
29 the contract.

1 (ii) No new contract shall be approved on or after July 1, 2017, but
2 contracts existing on that date may continue and be renewed.

3 (b) The contract shall provide for a rebate to the qualified business
4 based upon new payroll, and shall include the following provisions:

5 (i) The percentage of new payroll eligible for rebate, up to a maximum
6 of fifteen percent.

7 (ii) The maximum amount of new payroll eligible for rebate.

8 (iii) The number of new jobs and amount of new payroll required to be
9 created and maintained, and any other performance obligations required to be
10 met in order to remain qualified for participation in the program.

11 (iv) Designation of the facility or facilities eligible for participation in the
12 program.

13 (v) Monitoring of performance and consequences for failure to perform
14 and other contract violations.

15 (vi) An initial term of the contract, which may be up to five years, and
16 any renewal term available at the discretion of the secretary, which may be up
17 to an additional five years.

18 (4)(a) In addition, a qualified business shall be entitled to either the same
19 sales and use tax rebates authorized in R.S. 51:1787 for capital expenditures for
20 the facility or facilities designated in the contract, or the project facility expense
21 rebate provided for in Subparagraph (c) of this Paragraph, if the employer
22 meets the enterprise zone program hiring requirements and all other
23 limitations, procedures, and requirements in R.S. 51:1787.

24 (b) Any qualified business which receives a contract pursuant to this
25 Chapter shall also be entitled to a rebate of local sales and use taxes under the
26 same procedures and requirements provided for in R.S. 51:1787 for approval
27 of rebates for the sales and use taxes of political subdivisions and law
28 enforcement districts, including but not limited to the requirement that any
29 such request for a rebate of local sales and use taxes be accompanied by an

1 endorsement resolution approved by the governing authority of the appropriate
2 political subdivision or law enforcement district in whose jurisdiction the
3 qualified business is or will be located.

4 (c) In lieu of the sales and use tax rebate, a qualified business shall be
5 entitled to a project facility expense rebate equal to one and one-half percent of
6 the amount of qualified capital expenditures for the facility or facilities
7 designated in the contract. For purposes of this Subparagraph, the term
8 "qualified capital expenditures" means amounts classified as capital
9 expenditures for federal income tax purposes related to the project plus
10 exclusions from capitalization provided for in Internal Revenue Code Section
11 263(a)(1)(A) through (L), minus the capitalized cost of land, capitalized leases
12 of land, capitalized interest, capitalized costs of machinery and equipment, and
13 the capitalized cost for the purchase of an existing building. When a qualified
14 business purchases an existing building and capital expenditures are used to
15 rehabilitate the building, the costs of the rehabilitation only shall be considered
16 qualified capital expenditures. Additionally, a qualified business shall be
17 allowed to increase its qualified capital expenditures to the extent the qualified
18 business' capitalized basis is properly reduced by claiming a federal credit. A
19 qualified business earns the project facility expense rebate in the qualified
20 business' fiscal year in which the project is placed in service, but the qualified
21 business may not claim the project facility expense rebate until the Department
22 of Economic Development signs a project completion report or such other time
23 as provided for by rule or regulation. The project completion report for the
24 project facility expense rebate shall adhere to the same requirements found in
25 R.S. 51:1787(A)(1)(a)(ii) for the sales and use tax rebate.

26 D. Annual Certification of Eligibility. (1) The approved qualified
27 business shall file applications for annual rebates with the Department of
28 Economic Development. A corporate officer of the qualified business must sign
29 documentation to certify its continued eligibility for the rebates, as provided in

1 Subsection B of this Section. The qualified business may be subjected to a
2 limited audit by the Department of Economic Development to verify such
3 eligibility at the company's expense. The approved contract between the
4 qualified business and the Department of Economic Development shall
5 authorize the continued rebate as long as the business remains a qualified
6 business as defined in this Section and complies with the terms and performance
7 obligations of its contract, as they existed at the time of such approval. If a
8 qualified business fails to maintain the eligibility requirements for participation
9 in the program or fails to meet all performance obligations of the contract, the
10 secretary may suspend or terminate its participation in the program.

11 (2) Upon approval of the application for annual rebates, the department
12 shall send a certification letter to the Department of Revenue for payment of the
13 rebate containing the proper entity to which the rebate should be issued and the
14 amount of the rebate to be issued. The Department of Revenue may require the
15 business to submit any such additional information as may be necessary to
16 properly issue the rebate. Payment shall be made from the current collections
17 of the taxes imposed by Title 47 of the Louisiana Revised Statutes of 1950, as
18 amended.

19 E. A taxpayer shall not receive any other incentive administered by the
20 Department of Economic Development for any expenditures or jobs for which
21 the taxpayer has received a rebate pursuant to this Section.

22 F. The department may promulgate rules and regulations after approval
23 of the House Committee on Ways and Means and the Senate Committee on
24 Revenue and Fiscal Affairs meeting jointly within forty-five days of the
25 publication of such proposed rules and regulations in the State Register.

26 Section 2. This Act shall become effective on July 1, 2012; if vetoed by the governor
27 and subsequently approved by the legislature, this Act shall become effective on July 1,
28 2012, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

Riser (SB 548)

Proposed law creates the Competitive Projects Payroll Incentive Program which provides a "qualified business" a contract to receive the following rebates under a five-year contract, renewable for another five years:

1. A rebate of up to 15% of "new payroll" determined to be eligible for such rebate by the secretary of the Department of Economic Development [DED] if the number of new jobs and amount of "new payroll" required to be created and maintained, along with any other performance obligations under the contract are met.

"New payroll" is defined as payment by the business to its employees for new jobs, exclusive of benefits and defined as wages under Louisiana Employment Security Law (La. R.S. 23:1472(20)).

2. The same rebates of state and local sales and use tax rebates authorized for Enterprise Zone-eligible business purchases of material used in the construction or improvement of, or addition to, a building and machinery and equipment used in the enterprise as provided in R.S. 51:1787 for the qualified business' expenditures on its facility at the facility or facilities designated by the department in the contract.

Or

In lieu of the sales and use tax rebate, a "project facility expense rebate" equal to one and one-half percent of the amount of qualified business' "qualified capital expenditures" on the facility or facilities designated by the department in the contract.

"Qualified capital expenditures" is defined as amounts classified as capital expenditures for federal income tax purposes plus certain exclusions from capitalization in IRC §263(a)(1)(A) - (L), minus the capitalized cost or leases of land, capitalized interest, capitalized costs of machinery and equipment, and the capitalized cost for the purchase of an existing building. Only the capital expenditures for rehabilitation of an existing building are considered "qualified capital expenditures". Additionally, qualified capital expenditures may be increased to the extent the qualified business' capitalized basis is properly reduced by claiming a federal credit.

Proposed law defines a "qualified business" eligible for the rebate contracts as businesses meeting all of the following criteria:

1. Businesses that the DED determines will have the following activities at its Louisiana site: corporate headquarters; clean technology; next-generation automotive; aerospace; destination healthcare; research and development operations; pharmaceutical manufacturing; renewable energy; or other business sectors targeted by the secretary as a focus of the department's economic development efforts.
2. Businesses which have, or will have within one year, sales of at least 50% of its total sales to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, to the federal government or any combination thereof. The secretary of DED, at his discretion, may include sales of affiliates of the business in determining the 50% sale requirement.

3. Businesses which offer, or will offer within 90 days of the effective date of qualifying for the rebates a "basic health benefits plan" to the individuals it employs. "Basic health benefits plan" is defined in the same manner as for Enterprise Zone employers, meaning coverage for basic hospital care, physician care, and health care which is determined by the DED to have a value of at least \$1.25 per hour and which is the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity who are exempt from the minimum wage and maximum hour requirements.

Unless a business is providing at least 25 new "headquarter jobs" or "shared service center jobs", the following businesses, are not eligible for rebates: retail sales, real estate, professional services, natural resource extraction or exploration, financial services or venture capital funds.

"Headquarter jobs" are defined as jobs of full time employees that are executive, administrative, or professional jobs based at a principal or regional office located in Louisiana, in which are located the principal or regional executive officers normally constituting a principal or regional headquarters providing corporate governance. Such principal or regional executive officers include but are not limited to chief executive officer, chief operating officer, and other senior level officers or appropriate regional equivalents.

"Shared services center jobs" are defined as jobs of full time employees residing in the state which are based at a business located in Louisiana that performs specific corporate operational tasks for the business, its affiliates or customers, such as accounting, human resources, payroll, or purchasing.

Proposed law specifies that gaming or gambling businesses are not eligible for the program.

Proposed law requires the qualified business to apply to DED after being invited to participate by the secretary of DED.

DED must determine if the applicant is an eligible "qualified business", that participation in the program is needed in a highly competitive site selection situation to encourage the business to locate or expand in the state, and that securing the project will result in a "significant positive economic benefit" to the state. "Significant positive economic benefit" is defined as net positive tax revenues to be generated as a result of the project taking into account direct, indirect, and induced impacts based on standard economic impact methodology utilized by DED and the value of the rebate and any other state tax and financial incentives that are used by the department to secure the qualified business.

Proposed law requires DED to propose a contract for the applicant to the Board of Commerce and Industry. Upon the Board's approval, the secretary must execute the contract. The contract must provide a rebate to qualified businesses based upon new payroll. The contract will have an initial term of up to five years. It may be renewed for an additional five years provided that the qualified business has complied with all the terms of the contract and has complied with the provisions of the proposed law.

Proposed law provides that no new contracts may be approved on or after July 1, 2017, but contracts existing on that date may continue and be renewed.

Proposed law authorizes the contract to provide for a rebate to the qualified business based upon new payroll, and shall include the following provisions:

1. The percentage of new payroll eligible for rebate, up to a maximum of 15%.
2. The maximum amount of new payroll eligible for rebate.

3. The number of new jobs and amount of new payroll required to be created and maintained, and any other performance obligations required to be met in order to remain qualified for participation in the program.
4. Designation of the facility or facilities eligible for participation in the program.
5. Monitoring of performance and consequences for failure to perform and other contract violations.
6. An initial term of the contract, which may be up to five years, and any renewal term available at the discretion of the secretary, which may be up to an additional five years.

Proposed law requires a qualified business to file applications for rebates with DED to show its continued eligibility for the rebates. It may be subjected to a limited audit by DED to verify its eligibility.

Proposed law requires the qualified business to file an application for an annual rebate with the DED, which contains a sworn statement by a duly authorized officer of the qualified business that the qualified business had complied with the contract and the proposed law during the fiscal year. Upon approval of the application for the annual rebate, a certification letter is sent to the Department of Revenue for payment of the rebate containing the proper entity to which the rebate should be issued and the amount of the rebate to be issued. The DOR may require the business to submit additional information necessary to properly issue the rebate. The rebate is made from the current collections of the taxes imposed by Title 47.

Proposed law prohibits a taxpayer who participates in this program from receiving any other incentive administered by DED for any expenditures for which the taxpayer has received a rebate pursuant to the program.

Proposed law allows DED to promulgate rules and regulations after approval of the House Ways and Means and Senate Revenue and Fiscal Affairs meeting jointly within 45 days of their publication in the State Register.

Effective July 1, 2012.

(Adds R.S. 51:3111)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Prohibits granting new contracts on and after July 1, 2017, but allows contracts existing on that date to continue and be renewed.
2. Defines "significant positive economic benefit" which the secretary must find in order to grant the use of the single sales factor for calculating income and franchise tax to an eligible business.
3. Changes the amount of personnel relocation costs which may be included in the "relocation costs" upon which the rebate is based from 40% of such personnel relocation costs to 60% of such personnel relocation costs.
4. Specifies that gaming or gambling businesses are not eligible for the

program.

5. Requires DED to send a certification letter to DOR upon contract approval containing the proper entity to which the rebate should be issued and the amount of the rebate to be issued.
6. Authorizes DOR to require the business to submit any additional information necessary to properly issue a rebate.
7. Specifies payment of the rebate from collections of all the taxes imposed by Title 47, not just income and franchise tax.